

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of
National Rural Telecommunications
Cooperative, LLC
Request for Waiver and Consolidation
Of 220 MHz Construction Requirements
File No. 131693

MEMORANDUM OPINION AND ORDER

Adopted: August 3, 2000

Released: August 4, 2000

By the Chief, Commercial Wireless Division, Wireless Telecommunications Bureau:

I. Introduction

1. On February 29, 2000, National Rural Telecommunications Cooperative, LLC (NRTC) filed a request seeking waiver of Sections 90.725, 90.767, and 90.769 of the Commission's rules in order to consolidate the construction ("buildout") requirements for its various licensed 220 MHz facilities. By this Order, we grant NRTC's waiver request in part and deny it in part, as described below.

II. Background

2. NRTC is a non-profit cooperative association composed of rural electric cooperatives, rural telephone systems, and small independent telephone companies. NRTC currently holds three different types of licenses in the 220 MHz band: (1) a five-channel Phase I nationwide license; (2) a 10-channel Phase II nationwide license; and (3) seven 7-channel Phase II regional licenses covering the continental United States. In its petition, NRTC states that it plans to use these authorizations to deploy a 22-channel nationwide 220 MHz system that will provide advanced telecommunications services to rural areas in forty-eight states.

3. Each of the three types of 220 MHz licenses held by NRTC is currently subject to different construction and implementation requirements. Under Section 90.725 of the Commission's rules, Phase I nationwide licensees must construct base stations having a minimum of five assigned

1 See Request of NRTC, LLC for Waiver and Consolidation of 220 MHz Construction Requirements filed February 29, 2000 (Waiver Request).

2 The stations involved are WPCU 518-545 (Phase I Nationwide); WPOL 329-334 (Phase II Regional); and WPOI 700 (Phase II Nationwide).

3 Waiver Request at 3.

nationwide channels, and must place those base stations into operation: (1) in at least ten percent of the geographic areas designated in the application within two years of the initial license grant, including base stations in at least seven urban areas listed in Section 90.741; (2) in at least forty percent of the geographic areas designated in the application within four years of the initial license grant, including base stations in at least twenty-eight urban areas listed in Section 90.741; (3) in at least seventy percent of the geographic areas designated in the application within six years of the initial license grant, including base stations in at least twenty-eight urban areas listed in Section 90.741; and (4) in all geographic areas designated in the application within ten years of the initial license grant, including base stations in at least twenty-eight urban areas listed in Section 90.741.⁴ The sites to be selected under Section 90.741 of the Commission's Rules are the "Top 100 Urban Areas for Phase I Nationwide Systems."⁵ NRTC's Phase I license was initially issued to Overall Wireless on July 13, 1994, and the two-and four-year construction requirements were satisfied prior to NRTC's acquisition of the license. Currently, NRTC is required to construct an additional twenty-one sites by July 13, 2000,⁶ and another twenty-one sites by July 13, 2004.

4. Section 90.769 of the Commission's rules requires a Phase II nationwide licensee to construct a sufficient number of base stations to provide coverage to: (1) either a composite area of at least 750,000 square kilometers or 37.5 percent of the United States population within five years of the initial license grant; and (2) either a composite area of at least 1,500,000 square kilometers or 75 percent of the United States population within ten years of the initial license grant.⁷ There is no requirement that the sites used to satisfy the Phase II requirements be selected from a pre-determined list. NRTC's Phase II Nationwide license was issued on November 6, 1998. The five-and ten-year benchmarks applicable to NRTC's Phase II Nationwide licenses are therefore November 6, 2003 and November 6, 2008, respectively.

5. Section 90.767 of the Commission's rules requires a Phase II regional licensee to construct a sufficient number of base stations to provide coverage to: (1) at least one-third of the population of the licensee's Regional Economic Area Grouping (REAG) within five years of the initial license grant; and (2) at least two-thirds of the population of the REAG within ten years of the initial license grant.⁸ Thus, the Phase II Regional requirements are based solely on population covered. NRTC's Phase II Regional licenses were issued on November 6, 1998. The five-and ten-year benchmarks applicable to NRTC's Phase II Regional licenses are therefore November 6, 2003 and November 6, 2008, respectively.

6. In its petition, NRTC seeks a waiver of the construction requirements applicable to its Phase I nationwide and Phase II Regional licenses, and requests instead that the Commission apply the

⁴ 47 C.F.R. § 90.725.

⁵ 47 C.F.R. § 90.741.

⁶ The Commercial Wireless Division of the Wireless Telecommunications Bureau orally granted NRTC a temporary extension of this deadline during the pendency of NRTC's waiver request.

⁷ 47 C.F.R. § 90.769.

⁸ 47 C.F.R. § 90.767.

Phase II nationwide construction requirements and deadlines to all of NRTC's licensed facilities.⁹ NRTC argues that application of a single set of construction benchmarks rather than three sets of inconsistent requirements is appropriate because NRTC plans to operate all of its 220 MHz licensed facilities as a single 22-channel nationwide system.¹⁰ NRTC also contends that applying the Commission's Phase I nationwide and Phase II regional construction requirements to certain of NRTC's facilities would impede construction of its integrated system and frustrate the goal of providing service to rural areas.¹¹ NRTC contends that the construction requirements for Phase II nationwide licenses are best suited to the construction of a system that is intended to serve sparsely populated geographic territories.¹²

III. Discussion

7. Pursuant to section 1.925 of the Commission's rules, a waiver may be granted if the petitioner establishes either that: (1) the underlying purpose of the rule would not be served or would be frustrated by application to the instant case, and that grant of the waiver would be in the public interest; or (2) where the petitioner establishes unique or unusual factual circumstances, application of the rule would be inequitable, unduly burdensome, or contrary to the public interest, or the applicant has no reasonable alternative.¹³ Alternatively, under section 1.3 of the Commission's rules, the Commission has authority to waive its rules if there is "good cause" to do so.¹⁴

8. On the facts before us, we find that a partial waiver of our 220 MHz construction requirements is warranted. On a nationwide basis, NRTC holds a total of 22 channels in the 220 MHz service, but because these channels fall into three different licensing categories they are subject to inconsistent and to some degree conflicting construction requirements and timetables. The rules for Phase I nationwide licenses require phased construction of a set number of individual base stations and focus on a designated list of urban areas.¹⁵ The Phase II regional license construction rules require coverage of a specified percentage of the population in each of the seven REAGs.¹⁶ The Phase II nationwide rules give licensees the option of meeting coverage benchmarks based either on population or on geographic area.¹⁷ In light of the fact that NRTC is using all of its licensed facilities to build a single integrated system, we

⁹ Waiver Request at 8.

¹⁰ Waiver Request at 2.

¹¹ Waiver Request at 6.

¹² Waiver Request at 8.

¹³ 47 C.F.R. § 1.925(3).

¹⁴ 47 C.F.R. § 1.3.

¹⁵ 47 C.F.R. § 90.725.

¹⁶ 47 C.F.R. § 90.767.

¹⁷ 47 C.F.R. § 90.769.

conclude that it is reasonable under these circumstances to apply a more uniform set of construction requirements to the system as a whole.

9. Specifically, we agree with NRTC that it is appropriate to extend geographic coverage requirements such as those found in the Phase II nationwide rules to NRTC's other licenses. The geographic coverage option already applies to the largest portion of the 22 channels held by NRTC. In addition, because this option allows licensees to meet coverage requirements based on geographic area as an alternative to population, it is well suited to NRTC's planned deployment of service in rural, sparsely populated areas. Provision of telecommunications services to rural areas is an important Commission goal. We conclude that under the circumstances presented here, this goal is better served by encouraging full deployment of NRTC's 22-channel system in rural areas than by applying construction requirements to certain channels in that system that are focused solely on population or on coverage of specific urban markets. Therefore, with regard to NRTC's Phase I nationwide channels, we will give NRTC the option of applying either its remaining six-and ten-year Phase I construction benchmark requirements or the Phase II nationwide construction benchmarks and timetable as modified below.

10. In addition, we believe that with respect to its Phase II regional licenses, we should allow NRTC to use geographic coverage as an alternative to population coverage. However, we also believe we should continue to require NRTC to complete some buildout in each of the seven REAGs at the five-year and ten-year dates. In each of its seven REAGs, therefore, NRTC must construct a sufficient number of base stations to provide coverage to: (1) either a composite area of at least 100,000 square kilometers or one-third of the population of the REAG within five years of the initial license grant; and (2) either a composite area of at least 200,000 square kilometers or two-thirds of the population of the REAG within ten years of the initial license grant.

11. Furthermore, while we agree with NRTC that special circumstances exist that justify a waiver in this case, we also conclude that it is reasonable, as a condition of the waiver, to require NRTC to meet certain interim construction benchmarks for its system. Without a waiver, NRTC would have been required under its Phase I nationwide license to meet its six-year construction benchmark for the Phase I channels on July 13, 2000. Under the Phase II nationwide timetable, however, NRTC's first construction benchmark does not occur until November 6, 2003. Therefore, to ensure that NRTC proceeds expeditiously with buildout of its proposed integrated system, we will require NRTC to meet an interim coverage benchmark for its 22-channel system of 250,000 square kilometers or 12.5% of the United States population by July 13, 2002. This represents one-third of the coverage required at the five-year benchmark for Phase II Nationwide licenses.¹⁸

12. In addition, because one of the bases for this waiver is NRTC's intent to build an integrated, nationwide system providing a unified service utilizing its various sets of licenses,¹⁹ this waiver applies to the subject licenses only so long as NRTC or a successor in interest operates the licenses as an integrated 22-channel system. This waiver will not apply to any smaller subset of these licenses transferred or assigned to another licensee.

¹⁸ *Id.*

¹⁹ Waiver Request at 6.

IV. Ordering Clause

13. Accordingly, IT IS ORDERED that, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and Sections 0.131, 0.331, 1.3, and 1.925 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331, 1.3, 1.925, the request filed by NRTC for waiver of the Phase I Nationwide and Phase II Regional construction requirements IS HEREBY GRANTED to the extent discussed herein, and otherwise IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

William W. Kunze
Chief, Commercial Wireless Division
Wireless Telecommunications Bureau